

**THE POLITICS OF  
THE AMERICAN  
CIVIL LIBERTIES UNION**

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*With a Foreword by*

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normal Civil Service procedures governing work performance can be invoked." It issued no caution regarding the irritating sexual advances that straights might engage in on the job. The ACLU went further by arguing that "in certain jobs there may be relevancy between the job and a person's private sexual conduct, including homosexuality." The government, however, bears a "very heavy burden of proof" in showing that homosexuality ought to be weighed as a matter for job denial. The Union concluded by saying that "the government should be permitted to rely upon present homosexual conduct or conduct so recently past that it clearly appears that the applicant is presently a practicing homosexual."<sup>378</sup>

In 1973 the National Sexual Privacy Project was founded by the ACLU to protect the rights of prostitutes, homosexuals, bisexuals, transvestites, and transsexuals; heterosexuals were also included.<sup>379</sup> But the ACLU's 1967 policy on homosexuals remained unchanged. It was not until April 1975 that the Union delivered a new policy. By that time the American Psychiatric Association had stricken homosexuality from its list of mental illnesses; homosexuality was now regarded as a "sexual orientation disturbance." The Union's 1975 policy, which is also its current one, went far beyond any of its previous policies: "Homosexuals are entitled to the same rights, liberties, lack of harassment and protections as are other citizens." This libertarian position allowed of no exceptions. In every respect, discrimination was condemned whether in employment, public or private ("sensitive" jobs or not), housing, immigration, or naturalization. Now the Union even opposed criminal restraints on "public solicitation for private sexual behavior between or among adults of the same sex."<sup>380</sup> With regard to children, the original proposal stated that the state had a legitimate interest in controlling sexual behavior between adults and minors by criminal sanctions. But this idea was scratched when Ruth Bader Ginsburg argued that such wording implied approval of statutory rape statutes. These statutes, she held, were of questionable constitutionality. David Isbell's motion was then carried; it simply contended that the state has an interest in protecting children from sexual abuse.<sup>381</sup>

Perhaps the most controversial aspect of the Union's policy on homosexuality is its endorsement of child custody rights for gays.<sup>382</sup> It is the Union's belief that if the court is going to deny custody to a parent, it should not be done arbitrarily or because of "personal preference for one style or mode of life over another. A court may give no consideration whatever to the parent's political beliefs or activities, religious opinions, or sexual preference."<sup>383</sup> In one of its most important victories, the ACLU succeeded in December 1981 in securing child custody for a lesbian. The woman's twelve-year-old son had spent summers and school holidays with his mother until 1978 when his father went to court to have the boy adopted by

the father's new wife. The Union defeated the father's objections in the Virginia Supreme Court after losing the initial round in a lower court.<sup>384</sup> It has been quite active in this area in recent years. The campaigns of Anita Bryant and the New Right have not proven to be as successful in the courts as they have in the legislatures of local communities.

### Prostitution

A prostitute whom feminist Kate Millet knows once told her: "All prostitutes are in it for the money."<sup>385</sup> It is because prostitution is such a lucrative business that the supply always seems to keep up with the demand. How a prostitute earns her or his money varies widely. Some are discreet and seem to bother no one; call girls who work out of a hotel are an example. Others work bars, night clubs, or casinos waiting for an offer. Those who work the streets sometimes wait for johns to approach them. But increasingly, prostitutes have become more aggressive, accosting young people in public. These are the cases that attract the most attention. The problem is not limited to controlling the advances of street prostitutes. The areas where prostitution flourishes in the United States are also the areas that invariably have a high crime rate. The 42d Streets are well known for the high incidence of muggings, beatings, narcotics, and the like. It is as though prostitution acts as a magnet for attracting deviants and degenerates of all kinds. There is not a city in the country that has not faced some degree of difficulty in confronting this situation: Sexploitation, and its attendant violence, is a ubiquitous phenomenon in urban areas.

Prostitutes have not been untouched by the sexual revolution of the 1960s. As with other segments of society, the profession of prostitution witnessed a change in standards, roughly equivalent to the changes in the normative order of society. Elementary rules of public decency were discarded as sexual mores became relaxed. The residents of Long Island City, Queens, have complained about prostitutes who use their parks as bathrooms and their streets as bedrooms. Nancy Schuln, president of the Boerum Hill Community Association in Brooklyn, has protested: "You just can't believe it unless you see it. Lookouts roaming around, prostitutes having sex on stoops and in parked cars, women out in the middle of the street in their underwear."<sup>386</sup> Under public pressure to do something about prostitution, New York Mayor Edward Koch instituted the "John Hour," a public broadcast of the names of men who had been convicted for patronizing prostitutes. His effort did not last long, for critics of his policy, namely, the New York Civil Liberties Union, mounted a protest against it.<sup>387</sup>



years later, England adopted the report's recommendation.<sup>371</sup> The impact of the report was not immediately felt in the United States. Laws proscribing homosexual conduct remained on the books, and there was hardly a stirring in the heterosexual or homosexual ranks over the report's conclusion. But as with other social movements in the postwar period, the decade of the 1960s saw the awakening of protest among those who felt socially dispossessed: Homosexuals organized to claim their rights.

The gay rights movement began in New York and California in the late 1960s. It was the riot that took place between gays and the police at the Stonewall bar in Greenwich Village in 1969 that brought the homosexual movement unparalleled notoriety. It was a perfect example of a modern protest movement, i.e. it centered not on rights taken away but on rights not yet enjoyed.<sup>372</sup> What gave the new movement its force was its political nature. Not satisfied to settle for an end to harassment and discrimination, the gay rights contingent sought to advance positive rights; it wanted nothing short of individual liberation and societal affirmation of its status. Homosexuality was not only not bad, it was good, or at least as legitimate as heterosexuality. To accomplish the goal of legitimation, gay activists pressed for a major transformation of society. No gay could experience individual liberation until the society itself had become liberated from the prejudices of the past. The New York Gay Liberation Front succinctly voiced its objective in its founding statement: "Gay Liberation is a revolutionary homosexual group of women and men formed with the realization that complete sexual liberation for all people cannot come about unless existing social institutions are abolished."<sup>373</sup>

Dennis Altman was one of the first gay rights activists to write a serious work on homosexuality. He spoke for many of his associates when he charged that the nuclear family was a source of tyranny. Children would be better off living in a communal setting, Altman argued. His main objective was to see to it that children were raised communally by both heterosexuals and homosexuals. Children, he contended, do not "belong" to their parents: this is an extension of the cult of property. The problem, according to Altman, was that homosexuality would never be seen as an equal variant of sexual preference unless gays had a hand in raising children: "As long as homosexuals are denied any role in child-rearing . . . it is unlikely that children can grow up with other than a distorted view of what is natural."<sup>374</sup> It would not be long before the issue of child custody for gays emerged as a heated controversy.

The ACLU issued its first policy on the rights of homosexuals on 7 January 1957. It was not a very progressive policy, but then again liberals in general would not take up the cause of gays until ten years later. The Union admitted that it was only occasionally called upon to defend the rights of

homosexuals, and made clear that it did not consider the issue to be of serious concern to civil liberties. In fact, the Union said the issue was beyond its province. It was not the business of the ACLU, the board said, "to evaluate the social validity of laws aimed at the suppression or elimination of homosexuals." Homosexuality constituted a common-law felony, argued the ACLU, and "there is no constitutional prohibition against such state and local laws on this subject as are deemed by such states or communities to be socially necessary or beneficial." Homosexuals were regarded by the Union as belonging to a "socially heretical" and "deviant group." As such, homosexuality may be regarded as "a valid consideration in evaluating the security risk factor in sensitive positions." The right to due process and the right not to register as a homosexual in a local community were the only rights that the Union was willing to defend.<sup>375</sup>

On 13 December 1965, the Board of Directors met to reconsider its policy on homosexuals. Once again it said that it was only occasionally called on to act on behalf of gays. Nonetheless, the board asserted that privacy rights require that homosexuals receive coverage and added that "the Union supports the idea that this kind of sexual behavior between consenting adults in private, as distinct from acts in public and improper public solicitation, should not be made the subject of criminal sanctions." This was the same position that the Wolfenden committee had taken in 1957, and that was the extent of the Union's changes. It still regarded homosexuals as members of a "socially heretical" and "deviant group" and continued to argue that gays could be screened as a security risk in "sensitive" employment.<sup>376</sup>

Eleven months later the board assembled to draw up another new policy on homosexuality. The minutes of the board meeting indicate that for the first time the ACLU was ready to consider the whole range of consensual sexual conduct; incest was also discussed as a civil liberties matter.<sup>377</sup> The heart of the revised policy read: "The right of individual privacy, free from government regulation, extends to private sexual conduct, heterosexual or homosexual, of consenting adults." The Union made clear that its policy applied only to private behavior and recognized the right of the public to be protected from "solicitation, molestation, and annoyance in public facilities and places"; minors, in particular, deserved protection against "adult corruption." It is evident from these statements that although the ACLU stopped labeling gays as deviant and the like, it nonetheless felt it prudent to guard against the advances of homosexuals. As for government employment, the Union maintained that no person should be disqualified because of private sexual conduct. But there were a few caveats: "If a homosexual employee becomes an irritating force by making sexual advances on the job which interfere with his or a fellow worker's performance, then the